

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

The seal of the United States District Court, District of New Hampshire, is a circular emblem. It features an eagle with spread wings perched atop a shield. The shield contains a cross with a star in the center. The words "UNITED STATES DISTRICT COURT" are inscribed along the top arc, and "DISTRICT OF NEW HAMPSHIRE" along the bottom arc.

PLAN FOR THE RANDOM
SELECTION OF
GRAND AND PETIT JURORS

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1.	<u>INTRODUCTION</u>	2
2.	<u>DECLARATION OF POLICY</u>	2
3.	<u>PROHIBITION OF DISCRIMINATION</u>	2
4.	<u>MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS</u>	3
	a. <u>Definitions</u>	4
5.	<u>SELECTION OF PROSPECTIVE JURORS - SOURCE LISTS</u>	5
	a. <u>Voter Registration Source List</u>	5
	i. <u>Volume of Names</u>	5
	ii. <u>Determining a "Quotient"</u>	6
	iii. <u>Determining a "Starting Number"</u>	6
	iv. <u>Manual Selection Method</u>	7
	b. <u>Licensed Driver Source List</u>	8
	c. <u>Merger of Source Lists</u>	8
	d. <u>Purely Randomized Selection Process</u>	9
6.	<u>MASTER JURY WHEEL</u>	9
7.	<u>QUALIFIED JURY WHEEL</u>	10
8.	<u>DETERMINATION OF QUALIFICATION FOR, AND EXEMPTION OR</u> <u>EXCUSE FROM, JURY SERVICE: QUALIFICATION PHASE</u>	12
	a. <u>Qualification for Jury Service</u>	13
	b. <u>Exemption from Jury Service</u>	13
	c. <u>Permanent Excuse From Jury Service on Individual Request</u>	14
9.	<u>SUMMONING OF JURY PANELS</u>	15
	a. <u>Petit Jury Panel</u>	15
	b. <u>Grand Jury Panel</u>	16
10.	<u>TEMPORARY OR PERMANENT EXCUSE FROM JURY SERVICE ON</u> <u>INDIVIDUAL REQUEST FOLLOWING THE ISSUANCE OF A SUMMONS</u> ..	17
11.	<u>OBLIGATION TO SERVE</u>	18
	a. <u>Method and Manner</u>	18
	b. <u>Failure to Appear</u>	19
12.	<u>GOVERNMENT DISMISSAL OF A GRAND JURY AFTER EMPANELMENT</u>	19
13.	<u>EXCLUSION, EXEMPTION, OR EXCUSE FROM JURY SERVICE -</u> <u>TRIAL PHASE</u>	20
14.	<u>MAINTENANCE, INSPECTION AND DISCLOSURE OF RECORDS</u>	21

1. **INTRODUCTION**

Pursuant to the provisions of the Jury Selection and Service Act of 1968 (Public Law 90-274), as amended, codified in 28 U.S.C. § 1861 et seq., the United States District Court for the District of New Hampshire adopts the following revised Plan for the Random Selection of Grand and Petit Jurors (*hereinafter referred to as the Plan*) for service in this district, to take effect after approval by the Reviewing Panel prescribed by 28 U.S.C. § 1863(a). The prior Plan for service in this district, which became effective December 22, 1968, as amended January 30, 1976; June 3, 1980; July 25, 1983; March 1, 1985; November 8, 1988; November 12, 1998; and June 29, 2001, is superseded as of the effective date of this revised plan.

2. **DECLARATION OF POLICY**

It is the policy of this Court that all litigants entitled to trial by jury in this district shall have the right to grand and petit juries selected at random from a fair cross section of the community in this district and that all citizens shall have the opportunity to be considered for service on grand and petit juries in this Court and shall have an obligation to serve as jurors when summoned for that purpose.

3. **PROHIBITION OF DISCRIMINATION**

No citizen shall be excluded from service as a grand or petit juror in this Court on the basis of race, color, religion, sex, national origin, or economic status.

4. MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS

This Plan shall be managed by the Clerk of the Court under the supervision and control of the Chief Judge.

The Court finds that electronic data processing methods can be advantageously used for managing this Plan. These electronic data processing systems may be located within the district court or such services may be contracted from independent vendors or agencies outside the judiciary. A properly programmed electronic data processing system or a combination system employing both manual and electronic machine methods, may, at the Clerk's option after consultation with the Chief Judge, be used to select names for inclusion in source lists, eliminate duplicated names, select master wheel names, select names of persons to be sent questionnaires, select names of persons in the qualified wheel to be summoned, and perform other clerical and record-keeping functions. In those circumstances where independent vendors or agencies are utilized, they shall provide to the court an affidavit or similar certification that the work assigned has been completed pursuant to the detailed criteria required by the court.

In the event of computer malfunction or any overt and/or obvious deviation from this Plan caused by an automated process, the Clerk, with the approval of the Chief Judge, shall manually, or by alternative electronic methods, proceed from the last step correctly implemented.

It is the Court's intent to delegate to the Magistrate Judge full authority to assist in the management of the Plan. The Clerk shall attempt to resolve all jury-related issues with the Magistrate Judge in the first instance so as to provide continuity that is so critical when managing jury matters. The Magistrate Judge shall have full authority over all petit jury (temporary or permanent) requests for excuse prior to empanelment. However, as to grand jury matters, this

delegation is more comprehensive. The Magistrate Judge has full authority over all phases of the grand jury process, including empanelment.

a. **Definitions**

i. Whenever used in this Plan, the term "Chief Judge of the Court" or "Court" shall mean the Chief Judge of the District Court or, in his/her absence, or by delegation, any other District Court Judge or Magistrate Judge.

Wherever used in the Plan, the terms "Clerk" and "Clerk of the Court" shall mean the Clerk of the District Court, any authorized Deputy Clerk, or any other person authorized by the Court to assist the Clerk in performance of functions under this Plan.

ii. Regarding the Department of Safety source list, regardless of age and citizenship status, the term "active licenses" shall *include* licenses held by those individuals, who have been convicted as habitual motor vehicle offenders and those who have had their licenses temporarily suspended while those specifically *excluded* would be all deceased individuals, those who reside or have moved out of state, those possessing expired licenses, and those who hold a non-driver's identification card while also possessing an otherwise valid driver's license.

iii. Wherever it appears in this Plan, the term "publicly draw" shall have the meaning prescribed by 28 U.S.C. § 1869(k).

5. SELECTION OF PROSPECTIVE JURORS - SOURCE LISTS

The Court finds, pursuant to 28 U.S.C. § 1863(b)(2) that while the general election voter registration lists from all cities and towns within the State of New Hampshire represent a fair cross section of the communities from which the names of grand and petit jurors shall be selected, an even greater number of citizens will be eligible for jury service if supplemental sources are also employed. Therefore, in order to broaden the base from which potential jurors shall be chosen and to foster the policy and protect the rights secured by 28 U.S.C. § 1861 and 1862, the Court approves the list of active licensed drivers, as maintained by the Motor Vehicle Division, Department of Safety, State of New Hampshire, as the supplemental source list, if available.

The list(s) used to select names for the master wheel shall be referred to as the "source list(s)." The selection of names from such source list(s) shall be done in a manner consistent with the selection procedures described within this Plan.

a. Voter Registration Source List

i. Volume of Names

As voter registration lists within the State of New Hampshire are submitted in handwritten, electronic, or printed form, the Clerk shall proceed, through the use of a properly programmed electronic data processing system/device or through a combination of manual and automated methods, to make the initial selection of names from the list of registered voters. The initial selection of names from this source list, for inclusion within the master wheel,

shall be sufficient to satisfy estimated juror needs for the entire four-year period as set forth in Section 6 of this Plan. This number may be reduced if a supplemental source list is available. In that case the initial selection of names from both source lists shall meet the Court's needs for the entire four-year period. This does not preclude a subsequent drawing should the initial estimate prove to be inadequate to meet the four-year criteria as set forth above.

ii. **Determining a "Quotient"**

After the number of names to be taken from this source list in the initial selection has been determined, the Clerk will divide the total number of names of registered voters by that number. The result is referred to herein as the "quotient." The quotient is the ratio of selected to unselected names. For example, if the Clerk determines that 12,000 names will be needed from this source list to supply jury requirements for four years, and if there is a total of 600,000 names in the list, the "quotient" to be used would be 600,000 divided by 12,000--or 50. The Clerk would, therefore, take every 50th name from the list of registered voters for the master wheel.

iii. **Determining a "Starting Number"**

After determining the "quotient" the Court shall establish a starting number. The starting number will be publicly drawn by lot in open court by the Chief Judge from numbered cards placed in a receptacle. Consecutively numbered cards used for this drawing should begin with a card numbered "one" and end with a card having the same number as the "quotient." Whenever a

subsequent drawing for the master wheel is necessary, as discussed herein, any starting number formerly drawn during the four-year period shall not be included.

iv. **Manual Selection Method**

Described below is a manual selection procedure for the voter registration source list which the Court finds shall result in the drawing of names proportionally representing a cross section of all counties within the district. According to this procedure, applicable to the initial drawing as well as such additional drawings as may be necessary, the voter registration lists shall be arranged in alphabetical order by town and city and by wards in numerical order within each city. A combination system employing both manual and electronic machine methods may be required to process this source list based on the existing technology of individual cities and towns.

The first name selected shall be taken from a randomized starting point (starting number) in the source list and the additional names shall then be picked at regular intervals to be determined by a quotient so spaced as to ensure that before the drawing is completed, every reasonable effort shall have been made to ensure it traversed all voter registration list(s).

The number of names to be drawn from each county shall be substantially in the same proportion as the number of names on that county's voter registration list bears to the total number of names on the voter registration lists for all counties within the state.

b. Licensed Driver Source List

The Court authorizes the Clerk to attempt to make such arrangements and procure such assistance as necessary to supplement the names drawn from the voter registration source list(s) (see 4 (a) above) with a similar-sized list of individuals having active drivers' licenses issued by the State of New Hampshire. A properly programmed electronic data processing system designed to achieve random sampling or selection shall be employed.

The Motor Vehicle Division, Department of Safety for the State of New Hampshire, maintains an integrated database of all licensed drivers within the State. The Court authorizes the Motor Vehicle Division to exclude from its random sampling those individuals who are deceased, who reside or have moved out of state, who possess expired licenses, and who hold a nondriver's identification card while also possessing an otherwise valid driver's license.

The number of licensed drivers names drawn for each county must be in substantially the same proportion as the number of registered voters in that county vote bears to the total number of registered voters in the state.

c. Merger of Source Lists

If a supplemental list is available, the names drawn from the two source lists shall be merged manually, by use of a properly programmed electronic data processing system or device, or by employing a combination of methods at the Clerk's option after consultation with the Chief Judge and based on the existing technology of individual cities and towns and the State of New Hampshire. Every reasonable effort shall be made

to eliminate duplications. This merged source list will hereafter be referred to as the Master Jury Wheel.

d. Purely Randomized Selection Process

At the Clerk's option, and after consultation with the Chief Judge, the selection of names from complete source list databases in electronic media for the Master Jury Wheel may be accomplished by a purely randomized process through routines developed by the National Institute of Standards and Technology (NIST). Such random selections of names from the source list(s) for inclusion in the master wheel by data computer personnel must insure that each county within the jury district is substantially proportionally represented in the Master Jury Wheel in accordance with 28 U.S.C. § 1863(b)(3).

Similarly, at the option of the Clerk and after consultation with the Court, a properly programmed electronic data processing system for pure randomized selection may be used to select names from the master wheel for the purpose of determining qualification for jury service and from the qualified wheel for summoning persons to serve as grand or petit jurors. The selections of names from the source list(s), the master wheel, and the qualified wheel must also ensure that the mathematical odds of any single name being picked are substantially equal.

6. MASTER JURY WHEEL

The Clerk shall maintain a Master Jury Wheel into which the names of those prospective jurors selected at random for service from the source list(s) shall be placed. The master wheel

shall consist of either a paper document which lists the names, addresses, and participant numbers and/or identical electronically stored data. The Clerk shall cause to be prepared a listing of names drawn, which listing shall not be disclosed except on order of the Court or pursuant to 28 U.S.C. §§ 1867 and 1868. Pursuant to Section 1863(b)(4) of the Act, the Court finds that placing at least one-half of one percent of the total number of persons on the lists used as a source of names would be cumbersome and unnecessary. Accordingly, the minimum number of names to be placed initially in the Master Jury Wheel shall be not less than one thousand (1,000) names. The Chief Judge of the Court may order additional names to be placed in the Master Jury Wheel from time to time as necessary.

The Master Jury Wheel shall be emptied and initially refilled, as herein provided, once every four (4) years, within nine (9) months following the November general election, and may be maintained either manually or by the use of a properly programmed electronic data processing system or device.

When the master wheel is emptied, the existing qualified wheel will continue to be used until an adequate number (to be determined by the Clerk) of persons from the new master wheel have been qualified. At that time, the old qualified wheel shall be emptied and a new qualified wheel created.

7. QUALIFIED JURY WHEEL

The Clerk shall also maintain a Qualified Jury Wheel which shall consist of either a paper document or series of paper documents which list the names, addresses, and participant numbers and/or identical electronically stored data. From time to time as directed by the Chief Judge,

random samplings of names from the Master Jury Wheel shall be taken. The number of names to be publicly drawn, both initially and for any subsequent sampling, shall be determined by the Clerk based upon anticipated jury demands of the Court plus a margin of extra names sufficient to compensate for the estimated number that will be unavailable or ineligible.

The Clerk shall have prepared, by manual or computer means, alphabetized lists of names drawn. These lists shall not be exhibited to any person except as provided herein and in Sections 1867 and 1868 of the Act, unless the Court shall otherwise direct. The Clerk shall, by manual or computer means, prepare and have mailed to every person whose name is so drawn, a juror qualification questionnaire accompanied by instructions to execute and return the questionnaire, duly signed and sworn, to the Clerk by mail within ten (10) days in accordance with 28 U.S.C. § 1864(a) of the Act. If the person is unable to fill out the form, another shall prepare it for him/her, and the preparer shall indicate that s/he has done so and the reason therefore. In any case in which it appears that there is an omission, ambiguity, or error in a questionnaire, the Clerk shall return it with instructions to the person to make such additions or corrections as may be necessary and to return it to the Clerk within ten (10) days.

Any person who fails to return a completed juror qualification questionnaire as instructed may, if time permits, be sent a warning letter requesting immediate return of the completed questionnaire and the possible ramifications of their inaction. At the time of his/her appearance for jury service, or prior thereto, any person may be summoned to fill out another juror qualification questionnaire in the Clerk's presence, at which time, if warranted, the person may be questioned, but only with regard to his/her responses to questions on the questionnaire. Any information thus acquired by the Clerk shall be noted on the questionnaire and transmitted to the

Chief Judge. Any person summoned by the Clerk who fails to appear as directed may be ordered by the Court to appear before it and to show cause for his/her failure to comply with the summons.

The Clerk shall place in the Qualified Jury Wheel the names of all persons drawn from the Master Jury Wheel who are qualified to serve as jurors and are not exempt or excused from such service. The questionnaires of said jurors shall be maintained in the custody of the Jury Administrator.

The Qualified Jury Wheel shall be emptied, refilled, and/or supplemented by additional samplings based upon the anticipated jury demands of the Court and may be maintained either manually or by the use of a properly programmed electronic data processing system or device.

8. DETERMINATION OF QUALIFICATION FOR, AND EXEMPTION OR EXCUSE FROM, JURY SERVICE: QUALIFICATION PHASE

The Chief Judge, on his/her initiative or upon recommendation of the Clerk, or the Clerk under the supervision of the Court, shall determine on the basis of information provided on the juror qualification questionnaire and other competent evidence whether a person is disqualified, exempt, or is to be excused from jury service. The Clerk, when proceeding manually as previously noted in the Plan, shall enter such determination on the juror qualification questionnaire and on the alphabetical list of names drawn from the Master Jury Wheel. As outlined in Section 4, the Clerk may at his/her option perform these clerical and record-keeping functions by using a properly programmed electronic data processing system. If a person did not appear in response to a summons, such fact shall be noted on said list.

a. Qualification for Jury Service

Any person shall be deemed qualified to serve on grand and petit juries in this Court unless s/he has sufficiently demonstrated in writing that s/he:

- (1) is not a citizen of the United States eighteen years or older who has resided for a period of one year within this district;
- (2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the qualification questionnaire;
- (3) is unable to speak the English language;
- (4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or
- (5) has a charge pending against him/her for the commission of, or has been convicted in a state or federal court of record, of a crime punishable by imprisonment for more than one (1) year and his/her civil rights have not been restored by pardon or amnesty.

The Court will require supporting documentation if a juror wishes to invoke any of the above causes for disqualification, exemption or excuse during this qualification phase.

b. Exemption from Jury Service

Pursuant to 28 U.S.C. § 1863(b)(6) and Title 28, United States Code, Sections 1861 or 1862, the following groups of persons and occupational classes are exempt from jury duty:

- (1) members in active service in the Armed Forces of the United States;

- (2) full-time members of the fire or police departments of any state, district, territory, possession, or subdivision thereof; and
- (3) public officers in the executive, legislative, or judicial branches of the government of the United States, or any state, district, territory, possession, or subdivision thereof, who are actively engaged in the performance of official duties. "Public officer" shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office.

As the above-mentioned statute bars the enumerated group of persons from service, they can only become qualified upon legislation so permitting. Should such legislation occur following the implementation of the Plan, the language of the statute shall govern until the Plan can be rewritten.

c. **Permanent Excuse From Jury Service on Individual Request**

The Court finds that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience and the excuse from jury service upon request of such members is in the public interest of members of such classes or groups and would not be inconsistent with 28 U.S.C. §§ 1861 and 1862. Such requests shall be granted by the Court on individual written request therefore:

- (1) all persons over seventy years of age;
- (2) all persons who have served as a grand or petit juror in a state or federal court within the preceding two years; and
- (3) volunteer safety personnel such as persons who serve without

compensation as firefighters or members of a rescue squad or ambulance crew for a public agency.

The Court will require supporting documentation if a juror wishes to invoke any of the above causes for excuse during this qualification phase.

9. SUMMONING OF JURY PANELS

From time to time, as ordered by the Court, the Clerk may publicly draw at random from the Qualified Jury Wheel the names of as many persons as may be required for grand or petit jury service in the District. The use of a properly programmed electronic data processing system or device may be used in lieu of, or in conjunction with, a manual selection process.

The Clerk shall have prepared an alphabetical list of the names of the persons so drawn who are qualified to serve as jurors and are not exempt or excused from such service for assignment to either the petit jury pool or a grand jury panel.

The Clerk shall have issued summonses directly to the persons whose names are so drawn and mail them by first class mail according to Section 2 of Public Law No. 97-463 which amends 28 U.S.C. § 1866(b) to permit the United States District Courts to serve summonses by first class mail.

a. Petit Jury Panel

The petit jury pool list shall be disclosed to the parties at least three (3) working days prior to the date of trial, unless otherwise directed by the Chief Judge or the judge assigned to try the case. However, the Court may order such names to be kept confidential in any case where the interests of justice so require. If such list is disclosed

to the parties, it shall be made available at the Clerk's Office to the public, upon request, on the date of trial. Local Rules 47.1 and 47.3 are incorporated herein by reference.

Persons whose names were selected pursuant to Section 7 of this Plan shall be called to appear as prospective jurors for all jury trials held in the district for a period not to exceed twelve (12) months, unless extended by order of the Chief Judge. In any such period, no person shall be required to serve or attend court for prospective service as a petit juror for a total of more than thirty (30) days, except when necessary to complete service in a particular case. When less than an entire petit jury pool for the district is called for service on a particular day, the Clerk shall randomly select the names of the jurors to report.

Prior to jury selection, the judicial officer(s) shall advise the Clerk as to the number of persons required for each jury draw(s). The Clerk will then randomly assign the number of persons requested from the available jury in attendance.

When these jurors are drawn for a petit jury panel, their names shall be chosen at random. This selection shall be made by extracting names randomly from a box or similar receptacle containing the names of the present panel or by using a properly programmed electronic data processing system.

b. Grand Jury Panel

Grand jury pool listings shall not be disclosed except as may be directed by the Chief Judge and shall be maintained as required by 28 U.S.C. § 1866(a). The names of twenty-three (23) qualified persons shall be randomly selected from the prospective grand jury pool, which shall then constitute the grand jury empaneled for service. The balance

of grand jurors not excused nor found to be disqualified, exempt or excluded from jury service may be assigned as alternates or, at the option of the Chief Judge, may be assigned to a petit jury pool to serve at some future date based upon need.

Grand jurors shall serve for a term not in excess of eighteen (18) months in accordance with Fed. R. Crim. P. 6(g) unless otherwise extended by the Court. In any two (2) year period no juror shall be required to serve upon more than one grand jury or to serve as both a grand juror and a petit juror in accordance with 28 U.S.C. § 1866(e).

10. TEMPORARY OR PERMANENT EXCUSE FROM JURY SERVICE ON INDIVIDUAL REQUEST FOLLOWING THE ISSUANCE OF A SUMMONS

Following the issuance of a summons, the Chief Judge, on his/her initiative or upon recommendation of the Clerk, shall determine, on the basis of information provided on the Juror Information Form and other competent evidence, whether a person who was initially qualified for jury service may be considered for temporary or permanent excuse. Such request may be granted by the Court on individual written request only upon a showing of undue hardship, extreme inconvenience, or for any other cause that the Court deems appropriate. The Court will require supporting documentation if a juror wishes to present a written request under the above-cited circumstances. The Clerk is allowed, under the supervision of the Court, authority to grant temporary excuses of short duration to prospective jurors on the grounds of undue hardship or extreme inconvenience. Any juror temporarily excused may be issued a subsequent summons upon expiration of the conditions which were the grounds for the initial temporary excuse. The Clerk, when proceeding manually as previously noted in the Plan, shall record such determination on the Juror Information Form or on the listing of names drawn from the Qualified

Wheel or, as provided for in Section 4, the Clerk may at his/her option perform these clerical and record-keeping functions by using a properly programmed electronic data processing system. If a person did not appear in response to a summons such fact shall be noted on said list. The Court, in lieu of excusing an otherwise qualified juror unconditionally, may limit the juror's term of service.

After a petit jury has been empaneled, all requests from jurors shall be dealt with initially by the presiding judge. Requests for temporary excuse by members of a sitting grand jury may be resolved by the Clerk or his/her designee. Only a judicial officer may grant a permanent excuse of any petit or grand juror.

11. OBLIGATION TO SERVE

When summoned to serve as a juror, every qualified person shall be obliged to serve. Failure to comply with this provision may result in the court imposing penalties in accordance with 28 U.S.C. § 1864(b).

a. Method and Manner

Any written requests to be excused from jury service shall be initiated exclusively by the individual summoned and returned by mail within five (5) days of receipt of the Summons for Jury Service except in emergency situations. Jurors who do not make a request in advance to be excused and who report for jury service only to request immediate release will not be paid by the Court for their service unless they can prove that circumstances warranted their making the trip to the courthouse.

b. Failure to Appear

Any person summoned for jury service who fails to appear as directed may be ordered to appear and show cause for his/her failure to comply with the summons. The juror shall not be paid fees or costs for this appearance. A juror who has been assigned to a case and sworn or affirmed and who fails to appear at any session of court at the time fixed by the Court, may be ordered to appear forthwith and show cause for the failure to appear. If that juror fails to show good cause and is adjudged in contempt of court, in addition to any sentence imposed by the Court, no juror's fees will be paid for the time served on the case to which that juror had been assigned.

12. GOVERNMENT DISMISSAL OF A GRAND JURY AFTER EMPANELMENT

Following empanelment of a grand jury, a grand juror may be dismissed only by the court and upon an independent request or motion by the United States Attorney that such person's service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of the grand jury panel, and that exclusion of such person would not be inconsistent with the policy of 28 U.S.C. Sections 1861 and 1862. The court will not approve a request or motion except in extraordinary circumstances and for good cause shown following the empanelment of a grand jury.

**13. EXCLUSION, EXEMPTION, OR EXCUSE FROM JURY SERVICE -
TRIAL PHASE - PETIT JURY**

During the trial phase of the jury selection process, no person or class of persons shall be disqualified, excluded, excused, or exempt from jury service, except provided, that any person summoned for jury service may be:

- (1) excluded by the Court on the ground that such person may be unable to render impartial jury service or that this service as a juror would be likely to disrupt the proceedings;
- (2) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown;
- (3) excluded upon peremptory challenge as provided by law; or
- (4) excluded upon determination by the judge, in open court, that such person's service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations, and that exclusion of such person would not be inconsistent with the policy of 28 U.S.C. Sections 1861 and 1862; provided, however, that the name of any person so excluded shall be forwarded by the Clerk immediately to the Judicial Council of the United States Court of Appeals for the First Circuit together with the Court's detailed explanation for the exclusion, as provided in 28 U.S.C. § 1866(c)(5).

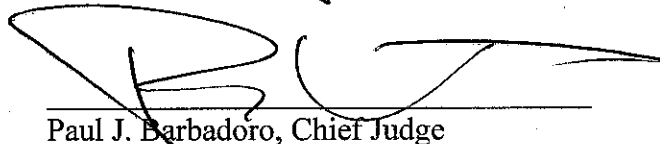
Any person excluded from a particular jury under Clause (1), (2), or (3), shall be eligible to sit on another jury if the basis for the initial exclusion would not be relevant to his or her ability to serve on such other jury.

14. **MAINTENANCE, INSPECTION AND DISCLOSURE OF RECORDS**

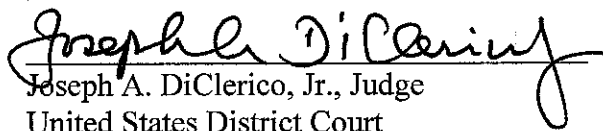
After the Master Jury Wheel is emptied and refilled pursuant to Section 6 of this Plan, and after all persons selected to serve as jurors before it was emptied have completed such service, all records and papers compiled and maintained by the Clerk before it was emptied shall be preserved in the custody of the Clerk for four (4) years and shall be available for public inspection for the purpose of determining the validity of the selection of any jury. Such records may then be destroyed providing the means used insure the privacy of their contents.

When any demand is made on the Clerk pursuant to Section 1867(d) and (f) or Section 1868 of Title 28 for an inspection or permission to reproduce and copy the contents of records or papers used in connection with the jury selection process, the demand shall be by motion and the Clerk shall refer such a request to the Chief Judge.

Dated at Concord, New Hampshire, this 10th day of June, 2004.



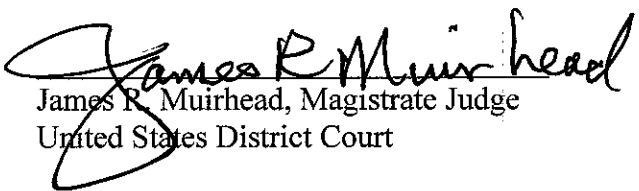
Paul J. Barbadoro, Chief Judge
United States District Court



Joseph A. DiClerico, Jr., Judge
United States District Court



Steven J. McAuliffe, Judge
United States District Court 6



James R. Muirhead, Magistrate Judge
United States District Court

Approved by the Judicial Council for the
First Circuit

Date: May 28, 2004